

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

**UNITED STATES OF AMERICA**

**v.**

**KENNETH P. STATHOPOULOS,**

**Defendant**

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**Crim. No. 95-35-B-C**

***RECOMMENDED DECISION TO DENY DEFENDANT'S MOTION  
FOR COLLATERAL RELIEF PURSUANT TO 28 U.S.C. § 2255***

Kenneth Stathopoulos moves the Court to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255 (1994). Stathopoulos was convicted pursuant to a guilty plea on one count of knowingly making a false statement regarding his criminal background while purchasing a firearm in violation of 18 U.S.C. §§ 922(a)(6) (Supp. 1996), and on one count of being a felon-in-possession of a shotgun in violation of 18 U.S.C. § 922(g)(1). He now challenges the sentence imposed by the court following his conviction for being a felon-in-possession, contending that his prior conviction in another jurisdiction, Massachusetts, for theft of a motor vehicle did not serve as a felony conviction for purposes of qualifying him for prosecution pursuant to 18 U.S.C. § 921(a)(20) (Supp. 1996).

Although the Court is confident that Stathopoulos's prior conviction qualifies him for prosecution pursuant to the felon-in-possession statute, *see United States v. Estrella*, No. 96-1625 (1st Cir. Jan. 9, 1997), he is precluded from raising the issue in this motion. The availability of collateral attack for nonconstitutional, nonjurisdictional errors has been sharply limited by the courts. *See, e.g., United States v. Frady*, 456 U.S. 152, 165 (1982); *Knight v. United States*, 37 F.3d 769,

772-774 (1st Cir. 1994). "A nonconstitutional claim that could have been, but was not, raised on appeal, may not be asserted by collateral attack under § 2255 absent exceptional circumstances." *Knight*, 37 F.3d at 772-773 (citing *Stone v. Powell*, 428 U.S. 465, 477 n.10 (1976); *Suveges v. United States*, 7 F.3d 6, 10 (1st Cir. 1993) (applying cause and prejudice standard to procedural default of jurisdictional claim)). Stathopoulos did not raise the present claim on direct appeal, nor has he attempted to show cause for his failure to raise the issue on direct appeal. Accordingly, the Court recommends that the motion be dismissed without a hearing.

#### NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

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Eugene W. Beaulieu  
United States Magistrate Judge

Dated in Bangor, Maine on March 11, 1997.